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July 12, 2021

Via Email

Mag. J. Jonathan W. Feldman
U.S. Magistrate Judge, U.S. Courthouse
100 State Street
Rochester, NY 14614

Re: ***Horn v. Medical Marijuana, Inc., et al.***
Case No: 15-CV-701 (FPG-MJR)

Dear Judge Feldman and Counsel:

We represent Plaintiff in this matter.

From the Final Pre-Trial Conference and Defendants' continued objections to the authentication Plaintiff's Exhibits, I write in advance of trial again to try to save time on Day 1 of trial with respect to the Defendants' evidentiary positions.

First, as to Defendants' Exhibit #418, the Medtox Lab report, I believe I told the Court this was a "Level 1" stipulation. That was incorrect. As to that proposed Exhibit by Defendants, I have to change the designation to a "Level 2" as Plaintiff wishes to dispute the relevance of this document.

Second, from the Pre-Trial Conference, I must seek greater clarification as to how to handle Plaintiff's current Exhibit #4, the FAQs from the Dixie website, (i.e. the subject pages that were removed from the general Internet, but captured in the Internet Archive). Defendants designated this a "Level 3" objection meaning that they will also contest its authentication. At the Conference, the parties had a discussion as to the Affidavit from Elizabeth Rosenberg, Records Request Processor from the Internet Archive (the "Wayback Machine"). This was the Affidavit I submitted on 10/23/20 (at Doc #151-2) in opposition to Defendants' Motions in Limine, and which I attach here.

I must seek greater clarification as to whether I will have the "burden of producing an unnecessary witness"¹ simply for the purpose of authenticating this Exhibit, and will the Court rule as it did with the Clinical Reference Laboratory Report, Plaintiff's Exhibit #7. I am in the position of requesting the Court to again consider Ms. Rosenberg's Affidavit as a Court Exhibit simply for ruling on authentication as to the FAQs. Otherwise, I will have to seek to produce her as an additional witness which I believe would be needlessly costly and time-consuming.

¹ From the Court's Final Pre-Trial Conference Order at Doc #174, page 7, ruling on Plaintiff's Exhibit #7, the subject urinalysis from the Clinical Reference Laboratory as authenticated.

Moreover, defense counsel rightly pointed out that the Exhibit #4 was missing its last pages. As such, I must also request to replace what I produced previously with that which was attached to Ms. Rosenberg's Affidavit as a complete and clear copy of the entire Exhibit.

Perhaps we can discuss these issues at the oral argument for the motions on July 14, 2021.

Very truly yours,

Jeffrey Benjamin

Jeffrey Benjamin, Esq.

cc: All parties via Email